IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 62146-7-I
Respondent,	)	(consolidated with No. 62842-9-I)
	)	
v.	)	DIVISION ONE
	)	
ALLEN LEWIS BRADFORD,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 1, 2010

Grosse, J. — Undisputed medical testimony that the victim suffered a fracture to the nose is sufficient to support a defendant's second degree assault conviction. This is particularly true here, where the defendant proffered no additional medical testimony to refute that diagnosis. A rational trier of fact could find from this evidence that the defendant committed second degree assault. We affirm the judgment and sentence.

FACTS

Following a jury trial, Allen Bradford was convicted of second degree assault arising from an incident that occurred during a pick-up basketball game at the University of Washington's Intramural Activities Center (IMA).[1] Although not a university student, Bradford regularly participated in pick-up basketball games at the IMA. On the night in question, Bradford was playing on a team opposite of Allen Foulstone and Ryan Purugganan. The game was intense and physical. At one point, in order to get open for a pass, Bradford shoved Foulstone out of bounds. Foulstone stepped back on to the court and used his body to prevent Bradford from recovering a

[1] Bradford was also convicted for bail jumping in a separate trial, but he is not appealing that conviction.

rebound as another player put up a shot. The shot was made and Foulstone grabbed the ball to inbound it. Bradford approached Foulstone and punched him in the face with a closed fist, knocking him to ground unconscious. As Foulstone lay on the ground, Bradford got on top of him and raised his fist to strike him again. Purugganan pushed Bradford off before he could hit Foulstone again. Bradford fled from the IMA building, but was stopped outside by university police.

When Foulstone came to he was bleeding from the nose, lips, and a cut near his eye.[2] Two days after the game, Foulstone went to the hospital. He was examined by Heidi Bray, a nurse practitioner licensed and board certified to provide care independently, diagnose injuries, and write prescriptions. Bray has received formal training in reviewing x-rays and informal training in reading computer tomography (CT) scans. Suspecting a nasal fracture, Bray ordered a CT scan.

The radiology department's report indicated that Foulstone had suffered a mild bending of the suture line between his nasal bone and another bone located between the bridge of the nose and the eye. Bray testified that "fracture" was an umbrella term used to describe a variety of medical anomalies, including a mild bending.

In closing, defense counsel argued that the radiologist's use of the term "mild bending" in its report indicated that there was no fracture. In rebuttal, the State argued that the radiology report was consistent with Bray's diagnosis and contended that defense counsel belittled Bray's diagnosis because she was not a doctor.

Bradford appeals, contending that there was insufficient evidence to convict him

[2] That scar was still visible at the trial.

and that he was denied due process and his constitutional right to confront witnesses.[3]

ANALYSIS

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.[4] "Credibility determinations are for the trier of fact and are not subject to review."[5] We must defer to the jury on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.[6] A factual sufficiency review "does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt but rather whether any rational trier of fact could be so convinced."[7]

Bradford was charged with second degree assault under RCW 9A.36.021(1)(a), which requires the State to prove that Bradford intentionally assaulted Foulstone and thereby recklessly inflicted substantial harm upon him.[8] Substantial bodily harm was defined for the jury as

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[3]Neither party addresses whether the trial court erred in not signing an order of indigency in this appeal. The trial court refused to sign the order because Bradford failed to report to jail after his conviction. For similar reasons, the State moved to dismiss Bradford's appeal, but a commissioner denied the motion relying on City of Seattle v Klein, 161 Wn.2d 554, 556, 166 P.3d 1149 (2007) (fugitive's failure to appeal does not waive their constitutional right to appeal). Transcripts were printed at public expense. Inasmuch as this court declined to modify the commissioner's ruling permitting this appeal to go forward, the issue is moot.

[4] State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003).

[5] State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

[6] Thomas, 150 Wn.2d at 874-75.

[7] State v. Smith, 31 Wn. App. 226, 640 P.2d (1982) (emphasis omitted).

[8] RCW 9A.36.021(1)(a) provides:

> (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:
> (a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm.

> bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

Bradford contends that there is no evidence that the injury to the victim's nose was a fracture of a bodily part. The dictionary defines "fracture" as

> [t]he act or process of breaking or the state of being broken: rupture by a break through the entire thickness of a material…the breaking of hard tissue (as a bone, tooth, or cartilage) . . . the rupture (as by tearing) of soft tissue . . . the product or result of fracturing.[9]

The State agrees that under this common definition, it had to prove that the defendant caused a break of any bodily part. It did this with Bray's testimony. Bray diagnosed Foulstone as having a "non-displaced fracture of his left lateral—the suture line that divides the left lateral nasal bone with the maxillary process." By its verdict, it is clear that the jury found Bray's testimony credible. Under these circumstances, we find the record presents sufficient evidence to affirm Bradford's conviction for second degree assault.

Bradford argues in the alternative that the statute is unconstitutionally vague as applied. He contends that substantial bodily harm means "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part."[10] But Bradford did not object to the lack of definition of the term before the verdict, nor did he propose a definition. As noted in State v. Whitaker, although the constitution requires that the jury be instructed as to each element of the

[9] Webster's Third New Int'l Dictionary, 901 (1993).
[10] RCW 9A.04.110(4)(b).

offense charged, it does not require that those elements be defined.[11] Because Bradford did not propose a definitional instruction, he is precluded from arguing the absence of it here.[12]

Bradford next argues that the trial court's sustaining an objection to the relevancy of his question regarding oblique fractures, compression fractures, and spinal fractures denied him his constitutional right to confront witnesses against him. Questions of relevancy and the admissibility of evidence are within the discretion of the trial court.[13] We review a trial court's decision to limit cross-examination of a witness for impeachment purposes for abuse of discretion.[14]

Bradford cross-examined Bray extensively on the fracture diagnosis. In sustaining the State's objection, the court made the following ruling:

> I'll sustain the objection. I think you made your point. There are many different types of fractures. But we're talking about facial fractures in this specific circumstance.

The trial court did not manifestly abuse its discretion here when it limited Bradford's cross-examination regarding fractures of a different nature.

We also find Bradford's contention that the trial court deprived him of a fair trial by preventing him from defining the word fracture to be without merit. The Sixth Amendment right to counsel includes the right to deliver a closing argument.[15] But that right is not unfettered and trial courts have discretion over the scope of such

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[11] 133 Wn. App. 199, 231, 135 P.3d 923 (2006).
[12] Whitaker, 133 Wn. App. at 231.
[13] State v. Aguirre, 168 Wn.2d 350, 361, __ P.3d__ (2010).
[14] Aguirre, 168 Wn.2d at 361-62.
[15] State v. Frost, 160 Wn.2d 765, 772, 161 P.3d 361 (2007).

arguments.[16]

In his closing argument, Bradford argued that a mild bending of the lateral bone was not the same as a fracture. Bradford then attempted to argue the Latin derivations of the word fracture. The court sustained the objection after a sidebar relying on State v Anderson for the proposition that an undefined term in a statute will be given its usual and ordinary meaning.[17] Because neither party proposed a definition of the word fracture to the jury, it was left to the jury to determine.

Bradford's theory of the case was that there was no fracture because there was not a break, and that this was supported by the radiologist's report which used the term "bending" rather than break. He argued this extensively to the jury. This was a factual determination by the jury. Under the circumstances here, we cannot say that the trial court abused its discretion.

We affirm.

Grosse, J

WE CONCUR:

Appelwick, J

Dwyer, C. J.

[16] Frost, 160 Wn.2d at 771-72.
[17] 58 Wn. App. 107, 111, 701 P.2d 547 (1990).